

## SECTION C: REMARKS

### I. INTRODUCTION

This Amendment is responsive to the Office Action dated June 16, 2008. Claims 1, 3-10, and 12-20 were pending in this application. Claims 1, 3-10, and 12-20 are presently subject to rejection.

Claims 1, 3-10 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim subject matter.

Claims 1, 3 and 6-10, 12-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tanida, US Pat. No. 6,621,013 ("Tanida").

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanida in view of Osten US Pat. No. 5,719,950.

Claims 1, 9, 10 and 14 have been amended herein, without prejudice. No other claims have been amended, cancelled, withdrawn, or added. Therefore, Claims 1, 3-10, and 12-20 remain pending in this case. Reconsideration is respectfully requested.

### II CLAIM REJECTIONS UNDER 35 U.S.C. § 112 SECOND PARAGRAPH

Claims 1, 3-10 were rejected under 35 U.S.C. §112 second paragraph for failing to recite antecedent basis in independent Claim 1 for "the housing."

An amendment in Claim 1 has been entered herein to correct the deficiency. This amendment after-final is presented pursuant to 37 C.F.R. §1.116(b)(1) as complying with requirement of form set forth in a previous Office Action.

**III. CLAIM REJECTIONS UNDER 35 U.S.C. §102(b)**

Claims 1, 3, 6-10 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanida, US Pat. No. 6,621,013, ("Tanida").

Tanida discloses a digital weight apparatus having a bioelectrical impedance ("bioimpedance") feature to identify a user. Further, Tanida discloses a bioelectrical impedance value and a body weight value for a subject stored in a storage unit that is updated at each time the measurements are made.

The present invention is distinguishable from the prior art in that the digital weight apparatus has a microprocessor that manages and tracks user's profiles that provides more functionality than merely "updating" a body weight value at each time a measurement is made. For example, the ability to enter to the device target data is provided by the present invention. Additionally, profiles of the present invention stored in the device can allow user to compare target data with measured data and also present past and present data in the form of trends. See para. [0017].

Independent Claim 1 herein has been amended to include the device having user profiles that contain information. This limitation are not present in the cited art. Therefore Applicant respectfully submits that amended Claim 1 is patentable for the novel limitations recited by this amendment. Further, since Claims 3, 6-10 and 12, 13 depend either directly or indirectly from Claim 1, these claims are likewise allowable both for their dependency and the novel claim limitations recited therein.

Claim 9 has been amended to further distinguish the present invention from existing art by including the limitation that data can be presented in the form of trends.

Independent method Claim 14 has been amended herein to recite entering target data to the current user's individual user profile based on goals of said user; and comparing the target data to the measurement information.

Applicant respectfully asserts that these amendments to distinguish Tanida be entered after-final pursuant to 37 C.F.R. §1.116(b)(3) upon good and sufficient reasons why the amendment is necessary and was not earlier presented. The reason that the amendment was not presented earlier is that the "updating" the user profiles was a limitation presented originally in Independent Claim 14 but it was not brought to Applicant's attention except in the latest Office Action (6/16/08) that this was disclosed Tanida col. 3 lines 18-23. The previous Office Action (12/28/07) stated that method claim 14 was inherent in the corresponding apparatus claims that were rejected, however, nothing specifically addressed the limitation of "updating." Further, the amendments are only made involving subject matter pointed out by Examiner in page 5, second paragraph of the present Office Action (6/16/08).

#### IV. CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

Dependent Claims 4 and 5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tanida in view of Osten.

Similarly, Applicant respectfully asserts that since independent Claim 1 is patentable, as amended, for the reasons set forth above, dependent Claims 4 and 5 are likewise allowable both for their dependency and the novel claim limitations recited therein.

VI. CONCLUSION

Based on the above amendment and accompanying remarks, Applicant respectfully submits that all pending claims are in condition for allowance and earnestly solicits a notice thereof. Applicant further encourages the Examiner to telephone the undersigned attorney if it appears that a telephone conference would facilitate allowance of the application.

Respectfully submitted,



Timothy W. Fitzwilliam, Reg. No. 46,439  
Attorney for Applicant  
Catalyst Law Group, APC  
9710 Scranton Road, Suite 170  
San Diego, California 92121  
(858) 450-0099  
[tfitzwilliam@catalystlaw.com](mailto:tfitzwilliam@catalystlaw.com)